

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION**

**HORACE R. NUNLEY,**

**Movant,**

**v.**

**UNITED STATES OF AMERICA,**

**Respondent.**

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**No. 3:11-cv-00308  
Judge Trauger**

**ORDER**

The court has received a *pro se* notice of appeal (Docket No. 36) challenging the court's order (Docket No. 33) entered on October 6, 2011, assessing the \$455.00 appellate filing fee against the movant and establishing an installment plan for the collection of the fee.

After receiving this second notice of appeal from the movant, the court reviewed the record in this case. Upon reviewing the record and *Kincade v. Sparkman*, 117 F.3d 949 (6<sup>th</sup> Cir. 1997), the court has determined that the establishment of an installment plan was not appropriate under the circumstances. *Kincade* holds that the Prison Litigation Reform Act (PLRA) filing fee requirements do not apply to post-conviction proceedings filed under 28 U.S.C. §§ 2254 and 2255, such as the movant's § 2255 motion for habeas corpus relief. 117 F.3d 949, 951.

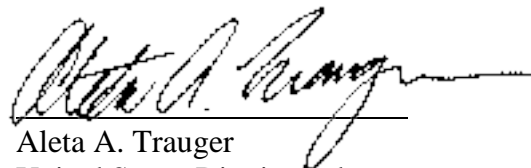
Accordingly, as to the assessment of an appellate filing fee in this action and the collection of any portion of the filing fee from Mr. Nunley's inmate trust fund account, the court's order of October 6, 2011 is **VACATED**. If any payment has been made pursuant to that order (Docket No. 33), then the Clerk is **DIRECTED** to return the full amount of any such payment to Mr. Nunley's inmate trust fund account within sixty (60) days of the entry of this order.

With respect to the movant's second notice of appeal (Docket No. 36), the court notes that the movant has not filed the required appellate filing fee or an application to proceed as a pauper. Accordingly, the movant is hereby **GRANTED** thirty (30) days from the date of entry of this order on the docket in which to submit to the Clerk of Court either the full appellate filing fee of four hundred fifty-five dollars (\$455.00) or an application to proceed on appeal in forma pauperis.

The Clerk is **DIRECTED** to send a copy of this order to the custodian of inmate trust fund accounts for the United States Penitentiary in Atlanta, Georgia.

A copy of this Order also shall be forwarded to the Clerk of the Court of Appeals.

It is so **ORDERED**.



Aleta A. Trauger  
United States District Judge